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Interim Chapter 7 Trustee
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8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 In re:

Case No. 21-51255-MEH

12 DUTCHINTS DEVELOPMENT LLC,

Chapter 7

13 Debtor.

14
15 **INTERIM TRUSTEE'S OPPOSITION TO**
MOTION OF SELLER AND THIRD
PARTIES IN INTEREST THE
BELLICITTIS FOR COMFORT ORDER
OR, IN THE ALTERNATIVE, MOTION
FOR RELIEF FROM AUTOMATIC STAY

16 Date: April 7, 2022

17 Time: 2:30 p.m.

18 Location: Courtroom 11

19
20 The Honorable M. Elaine Hammond,
United States Bankruptcy Judge

21
22 Kari Bowyer, (the "Trustee") is the duly appointed, qualified and acting Interim Chapter 7
23 Trustee herein and submits the following Opposition to Motion of Seller and Third Parties in Interest
24 the Bellicittis for Comfort Order, etc. (the "Opposition"), and in support thereof represents as follows:

25 **Background**

26 1. This case was commenced on September 29, 2021 (the "Petition Date") by the filing
27 of a voluntary petition by Dutchints Development LLC (the "Debtor") under Chapter 11 of Title 11 of
28 the United States Code (the "Bankruptcy Code").

1 2. The case was converted to a Chapter 7 proceeding on February 11, 2022.

2 3. The Trustee was appointed on February 11, 2022. [Doc# 128.]

3 **The Trustee Has Not Had An Opportunity To Investigate The Debtor's Financial Affairs**

4 4. The 341(a) Meeting of Creditors was originally scheduled for March 10, 2022. At that
5 meeting, certain creditors indicated that they intended to vote to elect a trustee. The 341(a) Meeting
6 was postponed and continued to March 25, 2022. On March 25, 2022, the Office of United States
7 Trustee ("UST") presided over a trustee election pursuant to Bankruptcy Code § 702. To date, the
8 UST has not issued any report relating to that election and the Trustee remains interim trustee.

9 5. Thus, notwithstanding the Trustee's ostensible February appointment, the Trustee has
10 not had an opportunity to conduct a 341(a) Meeting of Creditors. The Trustee has not had an
11 opportunity to examine the Debtor's responsible person. Furthermore, the Trustee has not received
12 all of the records requested from the Debtor and anticipates that she may need to file a turnover motion.

13 **The Purchase Sale Agreement And Debtor's Claim To Deposits**

14 6. The Estate has an interest in the Purchase and Sale Agreement (the "PSA") attached to
15 the Bellicittis' Motion. [Doc# 123-1.] Although the Motion does not mention it, the PSA recites that
16 significant deposits were made with an escrow company by the Debtor (the "Escrow"). [Doc# 123-1
17 at § 2.1.1.] Beyond the amounts listed in the PSA, the Trustee has been told that the total amount on
18 deposit with the Escrow in connection with the PSA is approximately \$830,000.

19 7. Although the Trustee has only had a brief period of time to investigate, under numerous
20 contractual and legal theories, the Estate is entitled to return of the funds on deposit with the Escrow.

21 **The Assignment**

22 8. The Assignment purportedly assigns the PSA from the Debtor to a Debtor-subsidiary.¹
23 [Doc#123-2.] The Bellicittis have not told the Trustee when, or from where, they received the
24 Assignment purportedly transferring the PSA to a Debtor-subsidiary. At this point, the Trustee has no
25 reason to believe the Assignment is not a fraudulent transfer post-dating the filing of the Petition.

26 9. In addition, although the Assignment is dated May 1, 2019, the PSA includes numerous
27

28 ¹ The Debtor's 2020 Tax Returns state that the Debtor wholly owns the assignee.

1 amendments – signed by the Debtor – that post-date the Assignment by years. [See, e.g., Doc# 123-1
2 at 83 (Seventh Amendment to PSA signed by the Debtor dated nearly two years after the alleged
3 Assignment).] The Assignment is, in a word, unreliable.

4 **Potential Non-Deposit Contract Claims**

5 10. The Debtor's personal representative has asserted the Debtor did not default under the
6 PSA. [Doc# 123-5.] If the Debtor is not in default and the Bellicittis terminate the PSA, or otherwise
7 breach the PSA, the Estate may have claims against them.

8 **Relief**

9 11. The Trustee seeks to preserve all of the Estate's rights and remedies with respect to
10 recovery of the deposit. The Trustee further seeks to preserve all claims that exist or may exist
11 against the Bellicittis.

12 12. So long as the Trustee can preserve the Estate's claims – without waiver or negative
13 impact to the claims – the Trustee will consent to the Bankruptcy Court granting the Bellicittis relief
14 from the automatic stay. In light of the questionable nature of the Assignment, and the potential
15 negative impact on the Estate's claims to the deposit and potential contract claims, a determination
16 that the PSA is not property of the estate (i.e., a comfort order) would be premature and detrimental
17 to the Estate.

18 Dated: April 6, 2022.

19 Respectfully Submitted,
20 **FOX ROTHSCHILD LLP**

21 */s/Jack Praetzellis*
22 Michael A. Sweet
23 Jack Praetzellis
24 Attorneys for Interim Chapter 7 Trustee for the
25 Bankruptcy Estate of Dutchints Development
26 LLC
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